IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6616 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

LAXMANBHAI HIRABHAI PARMAR

Versus

KESHAVLAL RAMJIBHAI PARMAR

Appearance:

1. Special Civil Application No. 6616 of 2003

MR IM BENGALI for Petitioner No. 1

MR NEHAL R JOSHI for Petitioner No. 1

MR RE VARIAVA for Respondent No. 1

MR MAULIK J SHELAT for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 30/09/2004

ORAL JUDGEMENT

Rule. Mr. Variava, ld. advocate for respondent No.1 and Mr. MJ Shelat, ld. advocate for respondents No. 2 & 3 waive service of Rule.

2. In this petition under Article 226 of the Constitution of India the petitioner has challenged the legality and validity of the judgment and order dated 9.4.2003 passed by the Gujarat State Cooperative Tribunal ["the Tribunal" for short] in Appeal No. 676 of 2001 in dismissing the same and confirming the judgment and award passed by the Board of Nominees dated 17.8.2001 in Lavad Suit No. 30 of 1999. The dispute is with regard to Tenement No. B-61 in the respondent No.2 society. A Lavad Suit No. 30 of 1999 came to be filed by the respondent No.1 herein and original-plaintiff before the Board of Nominees, Ahmedabad, for a declaration that he continues to be the member of the society and also for quashing and setting aside the communication/letter dated 23rd January 1996 by which he came to be removed as a member. It was also prayed for in the said suit to declare the action of the society in not handing over possession of Tenement No. B-61 to him as illegal and has also prayed for an appropriate order directing the original-defendants to hand over peaceful and vacant possession of Tenement No. B-61 to him. The Board of Nominees, Ahmedabad, by its judgment and order dated 17.8.2001 allowed the suit and granted relief as prayed for in favour of original-plaintiff respondent No.1 herein and directed the petitioner as well as respondents No. 2 and 3 herein to hand over peaceful and vacant possession of tenement No. B-61 to the respondent No.1 original-plaintiff.

2.1. Being aggrieved and dissatisfied with the same, the petitioner preferred Appeal No. 676 of 2001 before the said Tribunal and the said Tribunal by his judgment and order dated 9.4.2003 dismissed the said appeal and confirmed the judgment and award passed by the Board of Nominees dated 17.8.2001. Hence the petitioner the allottee of tenement No. B-61 preferred the present Special Civil Application under Article 227 of the Constitution of India.

3. At the time of hearing of the present petition it was suggested by the petitioner that the petitioner is in possession of the tenement in question since January 1996 and he is the bonafide purchaser of the tenement and has paid an amount of Rs. 1,68,000 to the society and possession was handed over to him with all legal documents in the year 1996. It is also submitted that the respondent No.1 original-plaintiff had paid only Rs. 70,000 and thereafter further amount was paid and therefore he was removed as a member and he was offered in the year 1999 itself to take back the aforesaid amount

of Rs. 70,000. It was also further submitted by the petitioner that at the most the petitioner can be compensated on payment of Rs. 70000 with some interest which was paid by the respondent No.1. However, in view of the fact that petitioner is in possession since 1996 who is a bonafide purchaser on payment of consideration by cheque and when there is a legal document in his favour, a suggestion was made by the parties to see that some reasonable amount be paid to the respondent No.1 so that he can be compensated in lieu of the aforesaid judgment and award passed by the Board of Nominees confirmed by the Tribunal. There were some exchange of accounts. However by and large there was consensus between the parties with regard to payment of amount in lieu of the judgment and award passed by the Board of Nominees so that interests of all the parties be protected and considered, considering the fact that the respondent No.1 original-plaintiff has paid an amount of Rs. 70,000 some where in the year 1991.

4. Considering the facts and circumstances of the case and that considering the fact that the petitioner is residing in the tenement in question since 1996 who seems to be the bonafide purchaser on payment of consideration of Rs. 1,68,000 and considering the fact that the respondent No.2 had sent a cheque of Rs. 70000 in the year 1995 and taking into consideration the broad consensus between the parties, the judgment and award passed by the Board of Nominees, Ahmedabad, dated 17th August 2001 in Lavad Suit No. 30 of 1999 is modified to the extent that in lieu of handing over possession of the tenant No. B-61 to the respondent No.1 original-plaintiff, the defendants No. 1 and 2, i.e. respondents No. 2 and 3 herein are directed to pay an amount of Rs. 1,70,000 in all to the respondent No.1 original-plaintiff. The judgment and order passed by the Gujarat State Cooperative Tribunal, Ahmedabad shall also stand modified to the aforesaid extent. The respondents No. 2 and 3 herein jointly are directed to pay the aforesaid amount of Rs. 1,70,000 to the respondent No.1 herein within the period of 4 weeks from today. Liberty to apply in case of difficulty. Rule is made absolute to the aforesaid extent with no order as to costs.

rmr. [M.R. Shah, J.]